

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF TEXAS  
TYLER DIVISION

In re:	§	
	§	CASE NO. 08-60258-BP-11
ZIPCO INTERNATIONAL PRODUCTS	§	
COMPANY, INC.	§	
	§	Chapter 11
Debtor	§	
	§	Hearing: October 7, 2008 at 9:30 a.m.

**TEXAS WORKFORCE COMMISSION’S RESPONSE IN SUPPORT OF  
TEXAS COMPTROLLER OF PUBLIC ACCOUNTS’ MOTION TO DISMISS**

The Texas Workforce Commission (“TWC”), appearing through the Texas Attorney General’s office, files this Response in Support of the Texas Comptroller of Public Account’s (“Comptroller”) Motion to Dismiss [Docket No. 277], and would show:

1. Debtor filed a petition for relief under Chapter 11 of the Bankruptcy Code on March 26, 2008.
2. Debtor is delinquent with unemployment taxes due post-petition to the TWC; cause for dismissal under § 1112(b)(4)(I) of the Bankruptcy Code. Specifically, Debtor has not paid unemployment taxes for the post-petition portion of the first quarter 2008 or for the second quarter 2008. On September 3, 2008 the TWC filed an administrative expense proof of claim in the amount of \$2,457.25 [Claim Register No. 57-2] for the post-petition delinquencies.
3. Debtor is operating in violation of 28 U.S.C. §§ 959(b) and 960 which require a debtor in possession to manage and operate property of the estate according to the requirements of state law in the same manner the owner or possessor of such property would be bound to do outside of bankruptcy. The Debtor is not in compliance with 28 U.S.C. §§ 959(b) and 960 because Debtor has failed to pay post-petition unemployment taxes when due. Congress amended § 960 in 2005 to

explicitly require that post-petition taxes "be paid on or before the due date of the tax under applicable non-bankruptcy law." Here, Debtor is required to remit Texas unemployment taxes on a timely basis accompanied by sworn returns pursuant to the Unemployment Compensation Act.

4. Pursuant to § 1112(b), upon the request of a party in interest, and after notice and a hearing, the court shall dismiss a Chapter 11 case or convert a Chapter 11 case to a case under Chapter 7, whichever is in the best interest of the creditors and the estate, for cause, including failure to pay post-petition taxes when due. Courts have held the failure to pay post-petition taxes when due is cause for dismissal under 11 U.S.C. § 1112(b). *See Berryhill v. United States (In re Berryhill)*, 189 B.R. 463 (N.D. Ind. 1995), citing *In re Hinchcliffe*, 164 B.R. 45 (Bankr. E.D. Pa. 1994) and *In re Vela*, 87 B.R. 229 (Bankr. D. P.R. 1988). *See also In re Koval*, 205 B.R. 72 (Bankr. N.D. Tex. 1996)(citing *Berryhill* in dismissing a Ch. 13 case for failure to timely pay post-petition taxes). Congress codified such holdings in 2005 with the addition of § 1112(b)(4)(I) which expressly states that, "failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief" is "cause" for dismissal.

5. Should the court, in its discretion, determine that conversion of this case to Chapter 7 is in the best interest of creditors, as opposed to dismissal, then the TWC requests that such alternative relief under § 1112(b) be granted.

WHEREFORE, the TWC requests that this case be dismissed or that alternative relief under § 1112(b) be granted, and for such further relief as is just.

Respectfully submitted,

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*/s/ Kimberly Walsh*

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ATTORNEYS FOR THE TEXAS  
COMPTROLLER OF PUBLIC ACCOUNTS

**CERTIFICATE OF SERVICE**

I certify that on October 2, 2008, a true copy of the foregoing was served by the method and to the following parties as indicated:

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